

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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United States of America,

Crim. No. 07-417 (RHK/SRN)

Plaintiff,

**MEMORANDUM AND ORDER**

v.

Eldon Philip Anderson,

Defendant.

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This matter is now before the Court on Defendant's self-styled "Petition For Declatory [sic] Judgment." (Doc. No. 151.) The caption of Defendant's submission indicates that he is seeking a declaratory judgment pursuant to the federal Declaratory Judgment Statute, 28 U.S.C. § 2201 et seq., and the petition itself does not mention any other statute, case law, or cognizable legal precept, on which the petition could be based. As far as the Court can tell, Defendant is attempting to mount another post-conviction challenge to his conviction and/or sentence in this case. He has not suggested any other possible purpose for his current petition.

It is well-settled, however, that a federal prisoner cannot seek review of a judgment entered against him in a federal criminal case by means of a declaratory judgment proceeding. "[T]he Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202 'does not provide a means whereby previous judgments by ... federal courts may be reexamined, nor is it a substitute for ... post conviction remedies'." Hugley v. Rios, No. CIV-10-336-D (W.D.Okla. 2001), 2010 WL 2610664 at \*4, quoting Shannon v. Sequeechi, 365 F.2d 827, 829 (10th Cir.1966) (*per curiam*). See also Gajewski v. United States, 368 F.2d 533, 534 (8<sup>th</sup> Cir. 1966) ("we are unaware of any authority which would permit the federal declaratory judgment statute, 28 U.S.C.A. § 2201... to be used as a post-conviction remedy"), *cert. denied*, 386 U.S. 913 (1967); United States v. Gutierrez, 116 F.3d 412, 416 (9<sup>th</sup> Cir.

1997) (“the Declaratory Judgment Act is not a substitute for a § 2255 motion to correct a sentence”); Abdel-Whab v. United States, 175 Fed. App’x 528, (3<sup>rd</sup> Cir. 2006) (unpublished opinion) (“the Declaratory Judgment Act cannot operate as a substitute or alternative remedial basis to 28 U.S.C. § 2255”). Therefore, Defendant’s “Petition For Declatory [sic] Judgment” must be summarily denied.

Based upon the foregoing, and all of the files, records and proceedings herein,  
**IT IS ORDERED** that Defendant’s “Petition For Declatory [sic] Judgment” (Doc. No. 151) is  
**DENIED.**

Dated: August 8, 2013

s/Richard H. Kyle  
RICHARD H. KYLE  
United States District Judge